IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WP(C).No. 9208 of 2007(U)

PETITIONER:

SMT.LEELA ANTONY, W/O.KURISSUMMOOTTIL ANTONY, AGED 38 YEARS, THRISSILERY, MANANTHAVADY, WYNAD.

BY ADV. SRI.C.P.RAVIKUMAR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE JAIL SUPERINTENDENT, CENTRAL PRISON, KANNUR.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

W.P(C).No.9208 of 2007

Dated this the 12th day of July, 2007

J U D G M E N T

The petitioner was found guilty, convicted and sentenced in a prosecution under Sections 451 and 377 I.P.C. His appeal was dismissed by the learned Sessions Judge. He preferred a revision before this Court. The revision petition was allowed by this Court and the verdict of guilty, conviction and sentence were set aside. The State preferred an appeal before the Supreme Court and in that appeal, the judgment passed by this Court in revision was set aside. The verdict of guilty, conviction and sentence were restored. After the Judgment of the Supreme Court in the appeal, the petitioner was arrested on 3.3.07. While he was undergoing imprisonment, he filed this Writ Petition.

2. According to the petitioner, he was in custody in the course of investigation for some period and later he had surrendered before the learned Magistrate on 7.3.06 and was sent to the prison to undergo the sentence as he was not in a position to comply with the order of suspension of sentence passed by the High Court and get himself enlarged on bail. He contended that he had already served the entire sentence imposed on him, but he was being unnecessarily sent to prison again without verifying the relevant facts.

3. This Writ Petition was admitted on 19.03.07 and report of the learned Magistrate was called for. The report of the learned Magistrate revealed that the learned Magistrate was not too sure as to whether the petitioner has served any sentence during the pendency of the revision. Dissatisfied with the state of affairs, interim directions were issued to release the petitioner on bail on his own bond. The learned Magistrate was directed to verify the records and take a decision as to whether the petitioner had already served the sentence imposed on him.

4. The matter had to wait for some further time. Ultimately now, I find a report dated 26.02.2007 has been received from the learned Magistrate, in which the learned Magistrate concedes that the petitioner has already undergone the entire sentence imposed on him and he was released from prison on 19.12.1997 after expiry of the entire sentence imposed on him. He was in custody as a convict prisoner from 9.3.96 to 18.12.97, it is now reported by the learned Magistrate. In the light of the report of the learned Magistrate dated 26.02.2007, this Writ Petition has got to be allowed. The petitioner is not bound to serve any further sentence after 19.12.1997. This Writ Petition is accordingly allowed recording the fact that the petitioner had undergone imprisonment from 9.3.96 to 18.12.97 and that he is not bound to undergo any further period of sentence as per his conviction as C.C.No.27 of 1987.

5. But to leave the matter there would certainly be an abdication of the supervisory jurisdiction which this Court is bound to exercise. I am shocked to note that the learned Magistrate without verifying the necessary details had sent the petitioner to prison on 3.3.07 and the petitioner was obliged to continue in prison till he was released from prison as per order dated 26.3.07. The matter must receive the attention of the Registry and that of the Honourable Judge in charge of the District. Recurrence of such occurrences must certainly be prevented by the system. The petitioner has unnecessarily and unfortunately been compelled to remain in prison from 3.3.07 to 26.3.07.

Place a copy of this Judgment before the Honourable Judge in charge of the District. The Registrar General shall also take necessary steps to prevent recurrence of such a shameful occurrence.

(R.BASANT, JUDGE)

rtr/-

R.BASANT, J

W.P(C).No.9208 of 2007

Dated this the 31st day of May, 2007

ORDER

The report of the learned Magistrate has been received. The learned Magistrate even now is not able to assert whether the petitioner is bound to undergo any further period of incarceration in execution of the sentence imposed.

2. Call for a further report from the learned Magistrate. The learned Magistrate shall consider all relevant circumstances and take

a a decision as to whether the petitioner is liable to undergo any further imprisonment in execution of the sentence.

3. Call on 02.07.2007. Till then the petitioner shall not be sent to prison.

(R.BASANT, JUDGE)

rtr/-